

CITY OF FRANKLIN

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT • DEPARTMENT OF ENGINEERING

MINUTES

City of Franklin, Indiana BOARD OF ZONING APPEALS

July 6, 2011

Members Present:

Bob Swinehamer
Tim Holmes
Phil Barrow

Vice Chairman
Secretary
Member

Members Absent:

Richard Pfifer
Rev. Richard Martin

Chairman
Member

Others Present:

Joanna Myers
Jim MacAbee
Jaime Harshman

Senior Planner
Legal Counsel
Recording Secretary

Call to Order:

Bob Swinehamer, Vice Chairman, called the meeting to order at 7:00 p.m. Mr. Swinehamer explained a continuance could be requested by the petitioners due to the fact that two members of the Board are missing and any action taken by the Board will require a unanimous vote of the 3 members present.

Approval of Minutes:

Phil Barrow made a motion to approve the June 1, 2011 minutes as presented. Tim Holmes seconded the motion. The members voted unanimously to approve the minutes.

Swearing In:

Jim MacAbee swore in the audience en masse.

Old Business:

ZB 2011-03 (UV): Julie Stewart-Retail Shop:

Mr. Swinehamer stated that the case has been withdrawn by the petitioner.

ZB 2011-07 (V): Allen Paris:

Ms. Myers stated the property is located at 4001 E CR 100 N. The petition is for a developmental standards variance to allow a 6 foot fence to be located within the front yard in the Residential: Suburban Neighborhood (RSN) and Residential: Suburban One (RS-1) zoning districts. The variance is needed as a fence that is located in a front yard is permitted to be no taller than 3 feet in height. The front yard is defined as the area between an adjacent street and the wall of the primary structure that faces it. The request is to allow a 6 foot fence between the structure and Upper Shelbyville Road and along the right-of-way of Putter Drive, which is along the south east side of the property.

Allen Paris, petitioner, stated that when they moved to the property 7 years ago they had hired a design architect to redesign the front entrance. He stated they would eventually leave the property to the community as a botanical garden and arboretum. He stated that one of the problems associated with that use is theft and vandalism and theft of the plants. They have samples of plants from around the world and plants that are rare and valuable. To the average home gardener, they are just another plant. He stated that a 3 foot fence won't work; it needs to be taller so people cannot step over it. Mr. Paris stated there recently was a golf cart in their front yard at 3 a.m. The golf cart had narrowly missed some of their valuable plants. Mr. Paris stated there is a lot of personal sentiment invested in the plants. He stated that people have let dogs run on his property and he has had motorcycles and utility trucks in his yard. He stated they need a 6 foot fence to stop this activity.

Mr. Paris stated the fence across the front will not adversely affect the health or general welfare of the community. He stated it will not affect the neighbors' property values. The fence will be attractive and will add to the value of the property. He stated that the fence along Upper Shelbyville Road will be a 6 foot wrought iron fence.

Mr. Paris stated the fence will not alter the use of the property. It will enhance the use of the property. He stated that having only a 3 foot fence will not work as people can step over it. Having the 3 foot fence is the practical difficulty as well, as the house is 600-700 feet off the road. He stated that due to the distance the house is off the road they need to protect their front yard similar to how other people need to protect their back yards.

Larry Paris, 1778 Putter Drive, stated he lives directly south of Allen Paris's property. He stated that a 6 foot fence is going to detract from his property. He stated that he talked to several professional realtors and they all believe that the fence would detract from their property value. He stated that Putter Drive does not have any storm drains and water drains from Hillside Drive into a field next to his house. There is also a drainage swale behind his house. He stated that having a 6 foot fence across Putter Drive would create a drainage issue. Mr. Paris submitted photos of the drainage problem. The photos were entered as Exhibit A for the record.

Dan Murphy, 1777 Putter Drive, stated that he has lived next to the golf course for 9 years and has had no issues with vandalism. He stated that a fence put up on the Allen Paris property will detract from his property values. He stated that his yard has turned into nothing but weeds because Mr. Paris has not maintained his yard as he should.

Fred Paris, 1230 South State Street, stated that Allen Paris's house was owned by his grandparents for years. He stated that as a real estate agent, he would be concerned about a 6 foot fence in front of Putter Drive. He stated that with a 6 foot fence it is going to make it look like an industrial property and decrease the value of the adjacent properties.

Gary Moody stated that most of the property owned by Mr. Paris is lawn. He submitted a diagram for the record. It was designated as Exhibit B. He stated that the trail was put where it is because it is over a sewer line and was concerned about the location of the fence over the sewer. He stated the plan was to install trail to Hillside Drive. He stated that now might be a good time to trade a 6 foot fence for the use of the trail on Mr. Paris's property.

Mike Sever, 1787 Putter Drive, stated that he does believe there is a safety issue having a 6 foot fence next to a heavily traveled road with a neighborhood on one side and a trail on the other side.

Allen Paris stated that across the front of the property will be a 3 foot fence. The 6 foot fence will start 40 to 90 feet back from Upper Shelbyville Road. He stated they would like the option to convert the 3 foot fence to a 6 foot fence in the front of the yard to this point. They want two fences installed as they are putting in pavers in the driveway and don't want utility companies driving on it. He stated the sewer line is about 90 feet back on the east side of the property and the fence will not affect the drainage. He has spent about \$4,000 planting grass and has planted 5 trees in the field.

Tim Holmes questioned what is permissible right now. Ms. Myers stated that any fence that is located from the front façade of the house towards Upper Shelbyville Road and along Putter Drive right-of-way cannot exceed 3 feet in height and may be located on the property line with no setback requirement from the right-of-way. The remainder of the property would be allowed to have a 6 foot tall fence.

Mr. Swinehamer questioned if his neighbors want to put a fence up would they be able to have anything higher than a 3 foot fence. Ms. Myers stated all of the residents to the northeast of Mr. Paris's house can install a 6 foot fence; however he is only allowed to put up a 3 foot fence. Mr. Swinehamer questioned if Mr. Paris could make the fence more appealing by making it wrought iron or by coming up with a compromise. Mr. Paris stated they had considered it and wanted to make Putter Drive their entrance, but the city required they put a cul-de-sac in and have their driveway come off of that. Mr. Paris stated that he could put in a 6 foot gate at the end of Putter Drive if the Board would allow the additional height.

Ms. Myers stated that there is dedicated right-of way to Paris Estates along Putter Drive. A 6 foot fence is allowed in the rear, except adjacent to Putter Drive right-of-way. She stated the structural side of the fence is required to face into the property. Mr. Swinehamer confirmed with Mr. Paris that he was amending the original proposal to build a 3 foot fence along Upper Shelbyville Road, which is permitted, and a 6 foot fence 40 to 90 feet back from Upper Shelbyville Road.

Mr. Swinehamer stated what he would suggest is to take the section of fence near Dan Murphy and Larry Paris's house and make it less than 6 feet in height.

Discussion was held in regard to possible fence heights and location adjacent to Putter Drive. Mr. Swinehamer suggested that the fence be no taller than 4 feet in height adjacent to Larry Paris and Dan Murphy's properties and asked if Mr. Allen Paris would agree to this modification or if he would like to request a continuance in order to discuss it with his wife. Mr. Allen Paris stated that he would not like to request a continuance as they would like to start installing the fence as soon as possible.

Mr. Allen Paris stated the fence will be angled in and the site visibility setbacks will be met. He stated they are concerned about the safety of the driveway. There will be a gate at the 3 foot fence and another at the 6 foot fence off of Upper Shelbyville Road.

Ms. Myers stated the minimum front yard setback for Upper Shelbyville Road is 30 feet.

Staff would recommend approval with the following conditions:

1. That a 6 foot fence, wrought iron, not be located any closer than 30 feet from the south edge of the pavement of Upper Shelbyville Road.
2. That a 4 foot fence be located from the northwest corner of Larry Paris's property to the corner of Dan Murphy's property.
3. That all fences be located a minimum of three feet from the boundary of Paris Estates.
4. That no fences shall impede drainage.

Action taken on ZB 2011-07 (V): Allen Paris:

Tim Holmes made a motion to approve the variance with the following conditions:

1. The 6 ft. wrought iron fence shall be located at least 30 feet south of the edge of pavement of CR. 100N/Upper Shelbyville Road.
2. From the northwest corner of Larry Paris' property (1778 Putter Drive) to the southwest corner of Dan Murphy's property (1777 Putter Drive), the fence shall be no taller than 4 ft. in height.

Phil Barrow seconded the motion. The motion passed unanimously.

New Business:

ZB 2011-09 (SE & V): The Flying Frog Bed & Breakfast:

Ms. Myers stated the property is located at 396 N. Main Street in the Residential: Traditional Neighborhood zoning district. The petition is for a special exception to allow the operation of a bed and breakfast and for a developmental standards variance to allow a 5 foot tall freestanding sign to be located 4 feet from the right-of-way of Main Street. The variance is needed as a bed and breakfast is not listed as a permitted use but is listed as a special exception. The maximum height of a freestanding sign in the RTN zoning district is 4 feet in height and must be located a minimum of 10 feet from right-of-way.

Sharon and Warren Isselhardt stated they lived in Franklin from 1992-2004 and with the purchase of the property would be moving back. She stated that she has talked to the Indiana Bed and Breakfast Association, to the Planning Department, and to the Health Department. She believes the use of 396 N. Main Street for a bed and breakfast is a good fit for the neighborhood. There are currently 4 rooms all with private baths located on the second floor. They bought the property from the bank and the neighbors are very happy they are taking over the property. There is a 4 car garage and space beside it for 2 additional vehicles for parking. She stated she thinks that Franklin is big enough for another bed and breakfast. It will be good for people visiting places such as the college and Masonic Home and will bring in a lot of revenue for the City.

Ms. Isselhardt stated that the bed and breakfast will not be injurious to the general welfare of the community. They are bringing back a house that's been in disrepair. They will be bringing in couples with more income as well.

Ms. Isselhardt stated that the development standards will be met due to the remodeling and the parking standards being met.

Ms. Isselhardt stated that ordinance intent would be met as they would be living in the house themselves and the upper floor will be used for guests. It used to be used as separate living units so the new use is not inconsistent with the previous use of the structure.

Ms. Isselhardt stated the bed and breakfast will agree with the comprehensive plan. There are currently 3 apartment buildings across the street so the bed and breakfast will not harm the neighborhood. Bed and breakfast owners take good care of their property so the comprehensive plan will not be harmed at all.

Ms. Isselhardt stated that the current sign regulations would not allow sufficient visibility for people driving down the street to see the sign. The sign needs to be taller. She stated that there is not a large grassy area in front of the house and is mainly cement. A sign would have to be located behind the sidewalk so the sign needs to be higher so it can be seen.

Ms. Isselhardt stated the adjacent properties are not going to be affected in an adverse manner. She stated they plan on doing a lot of landscaping and believe that it will help the neighborhood.

Ms. Isselhardt stated that there is a practical difficulty in that the sign can't be any farther from the street as it would be too hard to see and that the location of the house does not allow for the required setback to be met.

Fred Paris stated that he is in support of the project. He stated there is a practical difficulty to use the house for a single family because it is so large and families are not as large as they were when the house was originally built.

Ms. Isselhardt stated that she had talked to the Health Department and serving breakfast only is okay. For anything else they would need to have a commercial kitchen put in.

Staff recommends approval with the following conditions:

1. A minimum of 6 parking spaces shall be provided onsite.
2. All necessary State and local government approvals and permits shall be obtained.

Action taken on ZB 2011-09 (SE & V): The Flying Frog Bed & Breakfast:

Phil Barrow made a motion to approve the case with the following conditions:

1. A minimum of 6 parking spaces shall be provided onsite.
2. All necessary State and local government approvals and permits shall be obtained

Tim Holmes seconded the motion. The motion passed unanimously.

ZB 2011-10 (SE & V): Antenna Farmers, LLC-Korn Country:

Ms. Myers stated the property is located at 176 E. Jefferson Street. The petition is for a special exception to allow a telecommunications facility and tower, and a developmental standards variance to allow a telecommunications tower to be allowed within 500 feet of residentially zoned properties, to be located on a site that is less than 75 feet in width, to encroach within the minimum required setback and to allow a reduction and landscaping. The property is zoned Mixed Use: Downtown Center. The variances are needed as a telecommunications facility and tower is listed as a special exception in the MXD zoning district. The variances are needed as the ordinance outlines that the minimum setback of a tower be 50

feet, the minimum of the tower site shall be a distance of one half the tower height. The proposed tower is to be 150 feet in height. The Petitioner has also requested a variance from the landscaping requirements.

Keith Reising, a member of Antenna Farmers, LLC and president of Reising Radio Partners, Inc., stated that they would like to join the Franklin community with a radio service. They have an offer to purchase the property mentioned. He stated that in his experience most of the telecommunication ordinances were written for tele-com. He stated they would like to locate downtown and need some special exceptions.

Mr. Reising stated that the tower will not be injurious to the public health or general welfare of the community.

Mr. Reising stated that they cannot meet the developmental standards because of the setback requirements. The broadcast towers are located out of town and take up a lot of land. It is easy to meet setbacks when you have plenty of land but this is in town and there is not a lot of space.

Mr. Reising stated that the approval will not adversely affect the adjacent property values. There are towers in other communities and he stated that he can't think of anyone that's been injured because of that.

Mr. Reising stated that they meet the goals of the comprehensive plan as they will add to providing a well balanced community and are a source of promotion. They promote community interaction in a big way.

In regards to the variances, Mr. Reising stated that the approval will not be injurious to the public health or welfare of the community.

Mr. Reising stated that the adjacent property would not be harmed.

Mr. Reising stated there is a practical difficulty. He believes the practicality is not self-imposed.

Mr. Swinehamer questioned what the dangers and safety issues of the tower are. Mr. Reising stated the broadcast tower is located off of SR 252 outside of town. The towers are constructed to stay up and the structures must meet code. They are engineered by how much wind and ice are received in our zone. They are built to withstand 70 mph wind with a ½ inch of ice on them. Mr. Reising stated that they sit on 3 legs, about 10 feet apart and are in a significant structure below the ground. They are steel and are concrete encapsulated.

Mr. Reising stated that the parking standards requires 4 striped parking spaces. They have room for that and then some behind the tower. He stated that the landscaping issue is to protect the aesthetics of the area. They are proposing to landscape the north and the east side and leave it open to the building and the area.

David Wilson, 201 N. Main Street, stated that he works for Mr. Reising. He stated that in the radio business, nobody is building anything and Mr. Reising is willing to expanding the radio station to Franklin. He stated that as an employee he wants to be here and talk about Johnson County and Franklin. He stated to be successful you have to talk about local items.

Fred Paris stated that they have made a commitment to move to Franklin. He stated that he was concerned about the tower, but it will be all one color and it doesn't have to have lights. It will blend in to the downtown's scenery.

Michelle Hardcastle stated that she works for Mr. Reising and is excited to bring radio to Franklin.

Ms. Myers stated that Staff did receive one phone call concerning the radio tower from Dr. Record and he stated that he did not object to the petition.

Staff recommends approval of the special exception based on the information provided with the condition that a minimum of 4 striped parking spaces, 10 feet by 20 feet be provided onsite and staff would recommend approval for the variances with the following conditions:

1. A minimum of four (4) striped parking spaces 10' x 20' shall be provided onsite. One of which shall be handicap accessible
2. A site development plan shall be submitted for review and approval by the Technical Review Committee.
3. The fence shall be located a minimum of 10 feet from the east property line.
4. The required landscaping shall be installed along the north side and east side of the fence.

Mr. Reising requested that the fence be no closer to the east property line than the existing east façade.

Action taken on ZB 2011-10 (SE & V): Antenna Farmers, LLC-Korn Country:

Tim Holmes made a motion to approve the motion for the special exception with the stated conditions. Phil Barrow seconded the motion. The motion passed unanimously.

Phil Barrow made a motion to approve the variances with the following conditions.

1. A minimum of four (4) striped parking spaces 10' x 20' shall be provided onsite. One of which shall be handicap accessible
2. A site development plan shall be submitted for review and approval by the Technical Review Committee.
3. The fence shall be located a minimum of 5 feet from the east property line.
4. The required landscaping shall be installed along the north side and east side of the fence.

Tim Holmes seconded the motion. The motion passed unanimously.

ZB 2011-11 (V): Ye Ole Country Flea Market:

Ms. Myers stated that the case has been continued to the August 3, 2011 meeting due to insufficient public notice.

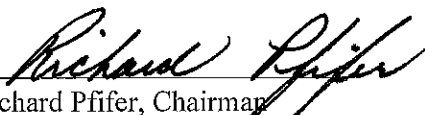
Other Business:


None.

Adjournment:

There being no further business, the meeting was adjourned.

Respectfully submitted this 3rd of August 2011.


Richard Pfifer, Chairman


Tim Holmes, Secretary